

**OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
MONTGOMERY COUNTY, MARYLAND
Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
(240) 777-6660/fax (240) 777-6665**

SPECIAL EXCEPTION OF FIROZA¹ SALAHUDDIN

Case No. S.E. 96-4

ORDER OF REVOCATION

Background

Special Exception 96-4 was granted to Petitioner Firoza Salahuddin by the Hearing Examiner, on October 29, 1996, to permit the operation of a Child Day Care Center for up to twenty (20) children, on her property located at 14737 Dufief Mill road, North Potomac, Maryland, in the R-200 Zone. For the reasons outlined below, this order will revoke the special exception, at the request of its holder, Firoza Salahuddin, and in accord with the recommendation of the Department of Permitting Services (DPS).

The Department of Permitting Services conducted an inspection of the premises on February 12, 2015, to determine whether the petitioner was in compliance with the terms and conditions of her Special Exception. Barbara Cox, the DPS Permitting & Code Enforcement Inspector reported the results of that inspection in a memorandum to the Office of Zoning and Administrative Hearings (OZAH) dated February 23, 2015. She concluded that the Special Exception should be voluntarily revoked “as it is no longer necessary for her use.” Exhibit 34. Attached to the DPS memorandum is a February 18, 2015 letter Ms. Cox sent to the Petitioner explaining her recommendation (Exhibit 34(a)) and Petitioner’s signed statement, dated February 20, 2015, requesting the revocation and promising to adhere to the Code (Exhibit 34(b)).

Ms. Cox stated in her memorandum to OZAH that Ms. Salahuddin has been continuously caring for a maximum of twelve (12) children since the granting of the Special Exception. She also intends to continue at this level indefinitely. As pointed out by Ms. Cox, under the new Zoning Ordinance, effective October 30, 2014, the Petitioner’s actual use (*i.e.*, caring for no more than 12 children) qualifies as a “Group Day Care” in the R-200 Zone under the standards set forth in Section 59-3.4.4.D.²

¹ The Petitioner’s first name, Firoza, was misspelled as “Firozaa” in the 1996 order granting the special exception.

² The Hearing Examiner notes that this use also would have qualified as a “Group Day Care” under the definition set forth in the old Zoning Ordinance §59-A-2, and would not have needed a special exception in the R-200 Zone under the old Code, as long as she did not care for more than 12 children. 2004 Zoning Ordinance §59-C-1.31(d).

Ms. Cox correctly set forth the prescribed standards under the 2014 Zoning Ordinance §59-3.4.4.D:

- The Petitioner is caring for a maximum of twelve (12) children. She is also licensed by the Maryland State Department of Education, Office of Child Care (License #72199) for a total capacity of twelve (12) children.
- The Petitioner is operating the Group Day Care in a detached house.
- The Petitioner is the provider, resident, and owner of 14737 Dufief Mill Road.
- The Petitioner is operating with no more than three (3) non-resident staff members on-site at any given time.

In her signed statement of February 20, 2015, Ms. Salahuddin confirmed that she is in compliance with the standards set forth above, and stated:

I understand that with the revocation of my Special Exception, I must continue to abide by the standards set forth in the aforementioned code section. Furthermore, in the event that I choose to care for more than twelve (12) children in the future, I acknowledge that I will have to reapply for a new Special Exception.

In conclusion, I respectfully request the revocation of my Special Exception, SE-96-4, as it is no longer necessary.

Ms. Cox concluded her February 23, 2015 memorandum to OZAH with the statement:

Based on my findings and the Petitioner's statement attesting to her compliance with the standards contained in Section 59-3.4.4.D, I am respectfully requesting that the Office of Zoning and Administrative Hearings take the necessary action to revoke Special Exception SE-96-4.

Opinion

Pursuant to Section 7.7.1.B.1. of the new Zoning Ordinance, special exceptions approved before October 30, 2014 must be reviewed under the standards and procedures of the Zoning Ordinance in effect on October 29, 2014 (*i.e.*, under the old, 2004 Zoning Ordinance). Since the subject special exception clearly falls into that category, it will be reviewed under the old Zoning Ordinance.

A child care facility with no more than twelve children is defined as a Group Day Care Home by §59-A-2.1 of the 2004 Zoning Ordinance. It is a permitted use, without a special exception, in the R-200 Zone, per §59-C-1.31(d) of the 2004 Zoning Ordinance, as well as under the 2014 Zoning Ordinance §59-3.1.6. Therefore, the special exception previously granted is not

needed as long as Ms. Salahuddin does not care for more than twelve children. She must, of course, comply with all applicable state law and regulations regarding the operation of child care facilities, regardless of whether she has a special exception.

There are two ways of viewing the evidence that Ms. Salahuddin never cared for more than twelve children at her child care facility – either the special exception use (*i.e.*, a Child Day Care Center, as distinguished from a Group Day Care) was never established or it was voluntarily abandoned by the special exception holder. In either case, under the applicable Zoning Ordinance, the special exception should be revoked.

Section 59-A-4.53(b)(2) of the old Zoning Ordinance provides that “*A special exception is not valid after 24 months if the use is not established or a building permit is not obtained and construction started within the period.*” In the subject case, the Child Day Care Center special exception use was never established because, according to DPS’s findings (Exhibit 34), Ms. Salahuddin never cared for more than 12 children, and thus was actually running a Group Day Care, which does not require a special exception in the R-200 Zone, not a Child Day Care Center. Under that interpretation, the grant of the special exception expired after 24 months and it should be revoked.

The other way to view this situation is that the use may have been established, in that a child care facility of some type was being run on the site, but the part of the use requiring a special exception (*i.e.*, the authorization to run a Child Day Care Center) is now being voluntarily abandoned.³

Abandonment is defined in the old Zoning Ordinance, §59-G-1.3(d)(i), as “*The cessation of use of the special exception or the cessation of activity necessary to the operation of the special exception use for a period of at least 6 months' duration.*” Since Ms. Cox found that Ms. Salahuddin has been continuously caring for **a maximum of twelve (12) children** since the granting of the Special Exception, she clearly has ceased any activity involving the need for a child day care center special exception for more than 6 months.

Section 59-G-1.3(d)(1) of the old Zoning Ordinance provides:

(1) If, after making an inspection of a property governed by special exception, the Department finds that the special exception use as granted has been abandoned, it must forward written notice of its findings to the last recorded holder of the special exception and to the property owner, advising of the Department's finding and directing that they forward to the Department, within 60 days from the date of

³ Neither the 2004 Zoning Ordinance nor the 2014 Zoning Ordinance contains a provision for voluntary withdrawal of a special exception, but both provide for abandonment of the use.

mailing of the notice, a written statement confirming the Department's finding that the special exception has been abandoned or challenging said finding and requesting that said special exception be continued.

- (2) *If the Department receives a written response from the special exception holder and the property owner acknowledges that the special exception has been abandoned, the Department must notify the Board of its findings, and the Board⁴, upon receipt of such notice, must adopt and issue a written resolution finding the special exception to have been abandoned and ordering the special exception revoked.*

Ms. Salahuddin is both the holder of the special exception and the property owner, as she is listed in the Maryland Real Property Tax Records as the property owner of the subject premises. Exhibit 34(c). Though not using the term “abandonment,” DPS has satisfied the requirements of §59-G-1.3(d)(1) by notifying Ms. Salahuddin, in writing, of the results of her inspection (Exhibit 34(a)) and inviting her to submit a written statement if she wished to have her special exception revoked. Ms. Salahuddin, in turn, executed just such a document (Exhibit 34(b)), seeking the revocation of her special exception. Thus, the special exception holder and property owner has acknowledged the abandonment, as required by Section 59-G-1.3(d)(2) of the old Zoning Ordinance.

Order

Based on this record, the Hearing Examiner hereby finds that the special exception granted in the above-captioned case has either never been established or has been abandoned. Accordingly, pursuant to Sections 59-A-4.53(b)(2), 59-G-1.3(d) and 59-G-1.3(f) of the 2004 Zoning Ordinance, Special Exception No. S.E. 96-4 is hereby **REVOKED**.

Dated: March 10, 2015



Martin L. Grossman
Director and Hearing Examiner
Office of Zoning and Administrative Hearings

cc: Ms. Firoza Salahuddin
Barbara Piczak Cox, Department of Permitting Services
Planning Department

⁴ Although this section refers to the “Board,” meaning the Board of Appeals, the Hearing Examiner is authorized by Section 59-G-1.3(f) of the old Zoning Ordinance to conduct the same proceedings with regard to special exceptions, such as this one, that it has issued.